

Message

From: Mancusi-Ungaro, Philip [Mancusi-Ungaro.Philip@epa.gov]
Sent: 11/29/2017 12:15:13 PM
To: Hurl, Kathy [Hurl.Kathy@epa.gov]
CC: Hicks, Matt [Hicks.Matthew@epa.gov]; McGill, Thomas [McGill.Thomas@epa.gov]; Calli, Rosemary [Calli.Rosemary@epa.gov]; Groman, Hazel [Groman.Hazel@epa.gov]; Mancusi-Ungaro, Philip [Mancusi-Ungaro.Philip@epa.gov]; Nalven, Heidi [Nalven.Heidi@epa.gov]
Subject: Re: waiver of review of new categories

Ex. 5 Deliberative Process (DP)

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Thoughts,

Phil

Sent from my iPhone

On Nov 28, 2017, at 4:54 PM, Hurl, Kathy <Hurl.Kathy@epa.gov> wrote:

233.51 Waiver of Review

(a) The MOA with the Regional Administrator shall specify the categories of discharge for which

EPA will waive Federal review of State permit applications. After program approval, the MOA may be modified to reflect any additions or deletions of categories of discharge for which EPA will waive review. The Regional Administrator shall consult with the Corps, FWS, and NMFS prior to specifying or modifying such categories.

(c) The Regional Administrator retains the right to terminate a waiver as to future permit actions at any time by sending the Director written notice of termination.

Ex. 5 Deliberative Process (DP)

From: Hurlid, Kathy
Sent: Tuesday, November 28, 2017 2:01 PM
To: Hicks, Matt; Mancusi-Ungaro, Philip; McGill, Thomas; Calli, Rosemary
Cc: Groman, Hazel
Subject: EPA oversight - quick summary

Please forward to those who were on the call but I did not copy here.

Per my action from this morning's call I have looked at the MOA's MI and NJ signed with EPA.

Both have language regarding EPA oversight including:

General responsibility

- * I.B.(3) savings clause - NJ MOA
- * 8) Program review and oversight – MI MOA
- * IV. B. EPA oversight of state program

Other oversight listed in one or both:

- * Compliance monitoring and enforcement
- * Termination or waiver of the review of categories of permit applications – EPA need only send written notice
- * Review procedures – permits and waivers of review
- * Enforcement oversight – either joint with the state, or independent and not waiving our right (this includes maintaining lead agency status on pending actions prior to assumption)
 - * Includes clause EPA may request the opportunity to review any compliance and enforcement records the state may have.
- * Requirements and process to keep the state/tribe informed of content and meaning of federal statutes, regs, standards, policy decisions etc that affect the state program. – state must then be consistent and no less stringent than these changes)
- * Annual report requirements
- * Coordination on mitigation banking

The regs specifically state:

233.13 (b) The Memorandum of Agreement shall set out the State and Federal responsibilities for

program administration and enforcement. These shall include, but not be limited to:

(1) Provisions specifying classes and categories of permit applications for which EPA will waive Federal review (as specified in section 233.51).

(2) Provisions specifying the frequency and content of reports, documents and other information which the State may be required to submit to EPA in addition to the annual report, as well as a provision establishing the submission date for the annual report. The State shall also allow EPA routinely to review State records, reports and files relevant to the administration and enforcement of the approved program.

(3) Provisions addressing EPA and State roles and coordination with respect to compliance monitoring and enforcement activities.

(4) Provisions addressing modification of the Memorandum of Agreement.

§ 233.16 Procedures for revision of State programs.

There is a bit here but specifically this is a catch all provision here regarding oversight:

(e) Whenever the Regional Administrator has reason to believe that circumstances have changed with respect to a State's program, he may request and the State shall provide a supplemental

Attorney General's statement, program description, or such other documents or information as are necessary to evaluate the program's compliance with the requirements of the Act and this part.

§ 233.20 Prohibitions.

No permit shall be issued by the Director in the following circumstances:

(b) When the Regional Administrator has objected to issuance of the permit under section 233.50 and the objection has not been resolved. Basically when the permit violates the (b)(1) guidelines or because of 404(c) or:

(d) If the Secretary determines, after consultation with the Secretary of the Department in which the Coast Guard is operating, that anchorage and navigation of any of the navigable waters would be substantially impaired.

§ 233.31 Coordination requirements.

1. . . . The Regional Administrator shall then have the time provided for in section 233.50(d) to comment upon, object to, or make recommendations.

§ 233.35 Issuance and effective date of permit.

(a) If the Regional Administrator comments on a permit application or draft general permit under section 233.50, the Director shall follow the procedures specified in that section in issuing the permit.

All of subpart F

Kathy Hurld

Clean Water Act 404(g) – U.S. EPA Lead

Office of Wetlands, Oceans, and Watersheds

E-mail: Hurld.Kathy@epa.gov<<mailto:Hurld.Kathy@epa.gov>>

Phone: 202-566-1269

USPS Address:

U.S. EPA

1200 Pennsylvania Ave., NW (4502T)

Washington, DC 20460

Delivery Address:

U.S. EPA

1301 Constitution Ave., NW (room 7424F)

Washington, DC 20004